

**Introduced by Senator Scott**

February 10, 2005

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An act to add Section 789.85 to the Insurance Code, relating to annuities.

LEGISLATIVE COUNSEL'S DIGEST

SB 192, as amended, Scott. Annuities: seniors.

Existing law generally regulates insurance, including annuity products. *Existing law requires a life insurance agent to provide specified disclosures to a senior 65 years of age or older in certain circumstances. Existing law prohibits the sale of an annuity to a senior in specified circumstances.*

~~This bill would state the intent of the Legislature to set forth standards and procedures relating to recommendations to senior consumers that result in transactions involving annuity products.~~

*This bill would require every insurer or other person transacting an annuity business in California to develop and use written suitability standards to determine whether the purchase or replacement of an annuity contract is appropriate for the needs of an applicant or annuitant who is 65 years of age or older. The bill would require an insurer that markets annuities to reject an application to purchase an annuity if it determines that the applicant or annuitant does not meet its financial suitability standards, or if he or she has declined to provide the information requested. It would set forth criteria to be applied in developing suitability standards, would require that certain information be provided to the commissioner, and would impose other specified requirements on insurers and other persons that offer or market annuities.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. It is the intent of the Legislature to set forth~~  
2     ~~standards and procedures relating to recommendations to senior~~  
3     ~~consumers that result in transactions involving annuity products.~~  
4     *SECTION 1. Section 789.85 is added to the Insurance Code,*  
5     *to read:*  
6     789.85. (a) Every insurer or other person authorized to  
7     transact an annuity business in California shall do each of the  
8     following:  
9     (1) Develop and use written suitability standards to determine  
10    whether the purchase or replacement of an annuity contract is  
11    appropriate for the needs of an applicant or annuitant who is a  
12    senior.  
13    (2) Develop and use procedures to determine whether the sale  
14    and marketing of annuity contracts to seniors meets the  
15    suitability standards developed by the insurer or other person.  
16    (3) Train its agents to use its suitability standards in  
17    marketing annuities.  
18    (4) Maintain a copy of its suitability standards and make them  
19    available for inspection upon request by the commissioner. The  
20    commissioner may order amendment or revision of the suitability  
21    standards if any portion violates California or other applicable  
22    law.  
23    (5) Conduct periodic reviews of its records that are  
24    reasonably designed to assist in detecting and preventing  
25    violations of this section and the applicable suitability standards.  
26    (b) The suitability standards developed by the insurer or other  
27    person shall take into account the senior's insurance needs and  
28    goals, including, but not limited to, the following:  
29    (1) His or her age.  
30    (2) His or her tolerance for investment risk.  
31    (3) His or her financial sophistication.  
32    (4) His or her ability to pay for the proposed annuity without  
33    liquidating assets.

1     (5) *His or her goals or needs with respect to the annuity and*  
2 *the advantages and disadvantages of investing in this annuity to*  
3 *meet these goals or needs.*

4     (6) *The value, benefits, and costs of his or her existing*  
5 *investments, if any, when compared to the values, benefits, and*  
6 *costs of the proposed annuity purchase.*

7     (7) *Whether he or she is replacing an existing annuity, and*  
8 *whether the replacement is unnecessary, as defined in Section*  
9 *10509.8.*

10    (8) *The disadvantages related to the conversion of any existing*  
11 *investments, savings or other sources of funding for the proposed*  
12 *annuity.*

13    (9) *His or her need to have funds readily available for major*  
14 *expenses, including emergency expenses that may arise from time*  
15 *to time in his or her daily life, and the effect of the annuity*  
16 *purchase on his or her ability to access those funds.*

17    (10) *The availability of funds for catastrophic life changes that*  
18 *may lead to long term in-home health care or a change of*  
19 *domicile into a long-term care setting, such as a continuing care,*  
20 *assisted living, residential care, or nursing home.*

21    (11) *His or her tax status at the time of purchase, expected tax*  
22 *status when the annuity matures, and ability to pay capital gains*  
23 *taxes that may arise from selling assets in order to purchase an*  
24 *annuity.*

25    (12) *Whether he or she believes that the annuity will allow him*  
26 *or her to qualify for Medi-Cal or Medicaid, and whether any*  
27 *other factors identified in Section 789.9 apply.*

28    (13) *Whether he or she has been adequately informed of the*  
29 *restrictions on the proposed annuity date, the earliest maturity*  
30 *date, his or her ability to change the date to annuitize, and the*  
31 *penalties or consequences for early surrender.*

32    (c) *The insurer or other person, and if an agent is involved,*  
33 *the agent, shall make reasonable efforts to obtain the information*  
34 *set forth in subdivision (b) and may request that the applicant or*  
35 *annuitant provide additional information necessary to determine*  
36 *suitability.*

37    (d) *The insurer or other person shall use the suitability*  
38 *standards developed pursuant to this section in determining*  
39 *whether issuing the annuity is appropriate for the senior.*

1     (e) In marketing an annuity, an agent or other person shall use  
2     the suitability standards developed by the insurer or other person  
3     pursuant to paragraph (1) of subdivision (a).

4     (f) If the insurer or other person determines that the senior  
5     does not meet its financial suitability standards, or if he or she  
6     has declined to provide the information requested, the insurer or  
7     other person shall reject the application.

8     (g) The insurer or other person shall report the following  
9     information to the commissioner on an annual basis:

10    (1) The total number of applications for annuities received  
11    from residents of this state.

12    (2) The age of the applicants.

13    (3) The number of applicants or annuitants who did not meet  
14    the suitability standards of the insurer or other person.

15    (4) If the suitability standards of the insurer or other person  
16    include a provision for special exemptions to the standards, the  
17    number of applicants who were issued annuities after obtaining  
18    an exemption from those suitability standards, and the reasons  
19    that the insurer or other person granted those exemptions.

20    (h) For the purposes of this section, "senior" means a person  
21    65 years of age or older.

22    (i) If any provision in this section is in conflict with any  
23    provision of Chapter 3 (commencing with Section 25230) of Part  
24    3 of Title 4 of the Corporations Code, the provision of the  
25    Corporations Code shall control.